UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,085	11/04/2003	Michael Blane Dabney	952663-325966	4427

24239   7590   05/28/2009
MOORE & VAN ALLEN PLLC
P.O. BOX 13706
Research Triangle Park, NC 27709

EXAMINER
ANDERSON, FOLASHADE

ART UNIT	PAPER NUMBER
3623	

MAIL DATE	DELIVERY MODE
05/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>01/28/2009</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-28</u> is/are pending in the application.

  4a) Of the above claim(s) <u>9-20</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-8 and 21-28</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This non-final office action in response to Applicant's submission filed on January

28, 2009. Currently, claims 1-28 are pending. Currently, claims 9-20 are withdrawn,

claims 1-9 are amended and claims 21-28 are newly added.

Priority

2.   The Examiner has determined that the specification of US Patent 6,643,663 does

not provide adequate support under 35 U.S.C. 112 to enable one of ordinary skill in the

art at the time the invention was made to perform claims 1-8. Therefore for the purpose

examination   claims 1-8 will not be given the benefit of the filling date of US Patent

6,643,663 and will be examined with respect to an effective filing date of 11/04/2003,

see MPEP 706.02 (B).

Response to Amendment

3.   Applicant's amendment to claim 1 is sufficient to overcome the "open-ended

conditional language" 35 U.S.C 101 rejection set forth in the previous office action with.

Response to Arguments

4.   Applicant's arguments with respect to the 35 U.S.C. 101 in regards to the Bilski

machine or transformation rejection raised in the previous office action have been fully

considered but they are not persuasive. Applicant argues that the limitation satisfies

both prongs of the Bilski machine or transformation test, see remarks pages 6-7. Even in the current amended state claim 1 fails to meet the requirements laid out in Bilski.

Applicant sites to the preamble "method performed on an electronic content management system," as a tie to a particular machine or apparatus; however this is considered a nominal tie that does not satisfy the requirement, wherein a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant further states that "many of the claimed steps recite performing operations over an electronic network and storing data in an electronic database." These steps as interpreted as insignificant extra solution activity. A specific article is insignificant when without more simply recites activities such as "data gathering or outputting as such the referenced limitation does not sufficient to pass the Bilski machine or transformation test.

Applicant additional refers to the paraphrased claimed limitation of "a feedback message received from a consumer that includes comments regarding published content is transformed by the method to an escalation feedback message where the escalation feedback message is based at least on the comments regarding published comments that are in the feedback message." Examiner respectfully disagrees. Regarding the transformation requirement under 35 U.S.C. 101, Examiner notes that

the Federal Circuit has held unpatentable a process of graphically displaying variances

of data from average values that neither specified any particular type or nature of data

nor how or from where the data was obtained or what the data represented. In re Abele,

684 F.2d 902, 909; see also In re Meyer, 688 F.2d 789, 792-93 (CCPA 1982) (process

claim involving undefined "complex system" and indeterminate "factors" drawn from

unspecified "testing" not patent-eligible). In contrast, the court has held one of Abele's

dependent claims to be drawn to patent-eligible subject matter where it specified that

"said data is X-ray attenuation data produced in a two dimensional field by a computed

tomography scanner"; wherein this data clearly represented physical and tangible

objects, namely the structure of bones, organs, and other body tissues. Abele, 684 F.2d

at 908-09. Thus, the transformation of that raw data into a particular visual depiction of a

physical object on a display was sufficient to render that more narrowly-claimed process

patent-eligible.   In the instant application the "generating an escalation feedback

message" is more akin to the unpatentable claim in Abele in that it change or variance

in the descriptive title of the data, than the patentable claim in Abele, in which the raw

data was used to create a visual representation of a physical object. Therefore, claim 1

is considered non transformational and does not meet this prong of the machine-

transformation test under 35 U.S.C. 101.

5.   Applicant's arguments with respect to the 35 U.S.C. 102(b) rejection raised claim

1 with respect to the use of the "intended use" type rejection, see remarks page 7, have

been considered but are moot in view of the new ground(s) of rejection.

6.   Applicant's argument that Island Data does not teach or suggest "generation of

an escalation feedback message that is based on the comments regarding published

content," with respect to claim 1, see remarks page 8, is directed towards newly

amended claim limitations which have fully been addressed in the updated amendment.

7.   In regards to Applicant's arguments with respect to the 35 U.S.C. 103(a) rejection

raised in the previous office action, specifically with respect to claim 5 and 25, see

remarks page 9, it is unclear what Applicant is accreting as not being taught or

suggested by the prior art of record.   Clarification is requested in Applicant's next

response.

Claim Rejections - 35 USC § 101

8.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

9.   Claims 1-8 are rejected under 35 U.S.C. 101 because In order for a method to be

considered a "process" under §101, a claimed process must either comply with the

"machine-or-transformation test" (1) be tied to a particular machine or apparatus or (2)

transform a particular article to a different state or thing. In re Bilski, 545 F.3d 943, 88

USPQ2d 1385 (Fed. Cir. 2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v.

Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972). If

neither of these requirements is met by the claim, the method is not a patent eligible

process under §101 and is non-statutory subject matter.

With respect to independent claim 1, the claim language recites the steps of receiving, storing, determining, determining generating, etc., however the claim language does not include the required tie or transformation.

Claims 2-8 are rejected based upon the same rationale, wherein the claim language does not include the required tie or transformation.

Claim Rejections - 35 USC § 112

10.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11.   Claims1-8 and 21-28 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended the claim to include in independent claims 1 and 21 the limitation of "generating an escalation feedback message." The originally submitted specification and claims do not suppose this limitation. As currently written escalation is a non-functional descriptive label for the feedback message rather than activity step of escalating (escalation), which is supported by the specification (see at least 0008 and 0034-0036) or the step of generating a ticket for the consumer feedback received based on data stored in the database, which also supported by the specification (see at least 0031-0032).

Claims 2-8 and 22-28 are dependent from and therefore suffer the same deficiencies

thus are rejected based upon the same rationale given with respect to the independent

claims.

Claim Rejections - 35 USC § 103

12.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

13.   Claims 1, 4, 6, 7, 21, 24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Island Data (www.islanddata.com, published 09/24/2002) in view of

Sloo (US Patent 5,895,450).

Claim 1 and 21

Claim 1 Island Data teaches a method performed on of managing consumer

feedback in an electronic content management system for managing consumer

feedback relating to published content, said method comprising:

- receiving electronically over an electronic network a feedback message

  from a consumer regarding published content, *(pg. 4, Express Response*

  receives internet-based customer queries form all online channels,

  including web forms, email, FQA, chat and newsgroups, where the online

  channels are old and well known means for presenting feedback) wherein

  said feedback message includes comments regarding the published

content *(p. 4 Express Response teach that each message's content is reviewed i.e. Express Response analyzes each customer inquiry using a natural language processing techniques the claim limitation of "message includes comments regarding the published content" is being interpreted as non-functional descriptive material which is not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106).*

- determining that said feedback message includes comments regarding published content *(pg. 4, Express Response analyzes each customer inquiry using natural language processing techniques)*;

- generating an escalation feedback message based at least on the comments regarding published content located in said feedback message *(pg. 5 QPS takes unstructured customer inquiry, such as email and builds (generates) a structured data record in real-time and pg. 4 Inquiries that cannot be answered effectively from the knowledgebase can be immediately escalated to a human call center agent for assistance; where*

"escalation" is interpreted as a message label rather than an action take

with respect to the message); and

- routing said escalation feedback message electronically via an electronic network to an electronic content management system, in order to close a communication loop between said content management and said consumer *(pg. 4 Inquiries that cannot be answered effectively from the knowledgebase can be immediately escalated to a human call center agent for assistance and pg. 5, escalate the request to the appropriate human agent, where the routing is inherent in that the feedback is moved from the automated answering to the manual answering).*

Island Data teaches Express Response agent responses are tracked and can be queued for capture into the knowledge base, but does not expressly teach storing information from said feedback message in an electronic database;

Sloo teaches in an analogues art storing information from said feedback message in an electronic database *(col. 2, lines 57-60 and col. 5, lines 60-63).*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Island Data the storing information from said feedback message in an electronic database as taught by Sloo since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claim 21 which is directed toward the computer program product, taught by Island Data *(pg. 8)* is dependent on and implied in the method of claim 1 and is therefore rejected based upon the same rationale given above.

Claim 4 and 24

Claim 4 Island Data and Sloo teach all the limitations of claim 1, further Island Data teaches comprising routing said escalation feedback message to a corporate wide help desk *is substantially similar to claim 1, in that the feedback is routed to a specific location/individual. The Examiner holds that the actual location/individual that receives the feedback is irrelevant since the act of receiving has no bearing on the functionality of the claim, the step of routing, which is preformed in the same manner regardless of the location/individual that receives the feedback. Therefore this claim is rejected for the same reasons given with regard to claim 1.*

Claim 24 which is directed toward the computer program product, taught by Island Data *(pg. 8)* is dependent on and implied in the method of claim 4 and is therefore rejected based upon the same rationale given above.

Claim 6 and 26

Claim 6 Island Data and Sloo teach all the limitations of claim 1, further Island Data teaches comprising sending a response message to said consumer in response to said feedback message wherein said response message includes one or more predefined responses that are selected based on said feedback message *(pg. 2 identifying reusable knowledge and pg. 4 Express Response generates relevant,*

useable response to the end user from the knowledgebase, where predefined

responses is the equivalent of reusable knowledge).

Claim 26 which is directed toward the computer program product, taught by

Island Data *(pg. 8)* is dependent on and implied in the method of claim 6 and is

therefore rejected based upon the same rationale given above.

Claim 7 and 27

Claim 7 Island Data and Sloo teach all the limitations of claim 1, and further

Island Data teaches comprising receiving a reply message from said consumer in reply

to said response message, and repeating said steps of storing, determining, generating,

and routing *(pg. 2 and pg.5, figure; where it has been held that duplication (repeating) of*

effort has no patentable significance unless new and unexpected result is produced, In

re Harza, 124 USPQ 378 (CCPA 1960))

Island Data nor Sloo expressly teaches receiving a reply message from said

consumer in reply to said response message; however it was old and well known

capability in the art at the time the invention was made to allow one to respond to given

information.

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to include in the invention of Island Data the receiving a reply

message from said consumer in reply to said response message as taught by the old

and well known capability since the claimed invention is merely a combination of old

elements, and in the combination each element merely would have performed the same

function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claim 27 which is directed toward the computer program product, taught by Island Data *(pg. 8)* is dependent on and implied in the method of claim 7 and is therefore rejected based upon the same rationale given above.

14.   Claims 2, 3, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Island Data (www.islanddata.com, published 09/24/2002) and Sloo (US Patent 5,895,450) and in further view of Pendakur (US Publication 2004/0073924 A1)

Claims 2 and 22

Claim 2 Island Data and Sloo teach all the limitations of claim 1,further *Island Data teaches a fully closed loop solution (pg. 1), capable of being integrated with existing applications and processes (pg. 1), highly configurable application that provides visitors to your website with multiple options for support (pg. 1) and an administration portal (pg. 10).*

Neither Island nor Sloo teaches wherein said routing said escalation feedback message comprises forwarding said escalation feedback message to an originating website.

Pendakur teaches the routing said escalation feedback includes forwarding said escalation feedback message to an originating website *(0066)* in an analogous art for the purpose of broadcast scheduling and content selection.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the routing of feedback to the originating website. As evidenced by Pendakur it is within the capabilities of one of ordinary skill in the art to route feedback to the originating website in the invention of Island Data and Sloo with the result in the routing of feedback to the originating website as needed in the invention of Island Data and Sloo.

Claim 22 which is directed toward the computer program product, taught by Island Data *(pg. 8)* is dependent on and implied in the method of claim 2 and is therefore rejected based upon the same rationale given above.

<u>Claims 3 and 23</u>

Claim 3 Island Data, Sloo and Pendakur teach all the limitations of claim 2, and wherein said step-of forwarding said escalation feedback message to an originating website includes forwarding said escalation feedback message to a particular section within said originating website *is substantially similar to claim 2 in that the feedback is routed to a specific location/individual. The Examiner holds that the actual location/individual that receives the feedback is irrelevant since the act of receiving has no bearing on the functionality of the claim, the step of forwarding, which is preformed in the same manner regardless of the location/individual that receives the feedback. Therefore this claim is rejected for the same reasons given with regard to claim 2.*

Claim 23 which is directed toward the computer program product, taught by Island Data (pg. 8) is dependent on and implied in the method of claim 3 and is therefore rejected based upon the same rationale given above.

15.   Claims 5 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Island Data (www.islanddata.com, published 09/24/2002) and Sloo (US Patent

5,895,450) and in further view of Gardenswartz et al (US Patent 6,055,573).

Claims 5 and 25

Claim 5 Island Data and Sloo teach all the limitations of claim 1, further *Sloo*

teaches monitoring a complainant (col. 5, lines 29-32); however neither Island Data nor

Sloo teaches comprising monitoring a content accessing activity of said consumer upon

receiving said feedback message in order to track a consumption pattern of said

consumer.

Gardenswartz teaches comprising monitoring a content accessing activity of said

consumer upon receiving said feedback message in order to track a consumption

pattern of said consumer *(col. 2, lines 23-30)*

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to include in the invention of Island Data and Sloo the monitoring a

content accessing activity in order to track a consumption pattern of said consumer as

taught by Gardenswartz since the claimed invention is merely a combination of old

elements, and in the combination each element merely would have performed the same

function as it did separately, and one of ordinary skill in the art would have recognized

that the results of the combination were predictable.

Claim 25 which is directed toward the computer program product, taught by

Island Data *(pg. 8)* is dependent on and implied in the method of claim 5 and is

therefore rejected based upon the same rationale given above.

16.   Claims 8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Island Data (www.islanddata.com, published 09/24/2002) and Sloo (US Patent

5,895,450) and in further view of Matthews et al (US Patent 6,865,268)

<u>Claim 8 and 28</u>

Claim 8 Island Data and Sloo teach all the limitations of claim 1, *and further*

Island Data teaches session history which maintains throughout the escalation process

which provides comprehensive view of each customer interaction (pg.11) Island Data is

silent on how the session histories are maintained and tracked. As such Island Data

and Sloo are silent on comprising opening a ticket including a tracking number for said

ticket upon receiving said feedback message, and closing said ticket after said

escalation feedback message is routed to said content management personnel.

Matthews teaches comprising opening a ticket including a tracking number for

said ticket upon receiving said feedback message *(figure 8, #70),* and closing said ticket

after said escalation feedback message is routed to said content management

personnel (*figure 8 #58*).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to include in the invention of Island Data and Sloo the opening a

ticket including a tracking number for said ticket upon receiving said feedback, and

closing said ticket after said feedback is routed to said personnel as taught by Matthews

since the claimed invention is merely a combination of old elements, and in the

combination each element merely would have performed the same function as it did

separately, and one of ordinary skill in the art would have recognized that the results of

the combination were predictable.

Claim 28 which is directed toward the computer program product, taught by

Island Data (pg. 8) is dependent on and implied in the method of claim 8 and is

therefore rejected based upon the same rationale given above.

Conclusion

17.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. Business Wire (The Big Face of Customer Service, published

08/09/1999) teaches escalation to live operators. Business Wire (CosmoCom, Intershop

Communications Announce Global Electronic Commerce Alliance; Technology

Intergration Opens New Dimension for Live Customer Service and Electronic

Commerce, published 09/28/1998) teaches routing of messages based on the context

of the request. CosmoCom (Live Customer Care with the Power of the Internet,

published 01/25/1999) teaches issuing tickets and automatically routing customers to

the appropriate rep.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to FOLASHADE ANDERSON whose telephone number is

(571)270-3331. The examiner can normally be reached on Monday through Thursday

8:00 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Folashade Anderson/
Examiner, Art Unit 3623

/Andre Boyce/
Primary Examiner, Art Unit 3623